

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3717
OFFERED BY MR. UPTON**

Manager's amendment

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Broadcast Decency
3 Enforcement Act of 2004”.

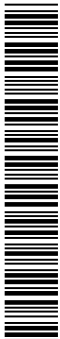
**4 SEC. 2. INCREASE IN PENALTIES FOR OBSCENE, INDECENT,
5 AND PROFANE BROADCASTS.**

6 Section 503(b)(2) of the Communications Act of
7 1934 (47 U.S.C. 503(b)(2)) is amended—

8 (1) by redesignating subparagraphs (C) and
9 (D) as subparagraphs (D) and (E), respectively;

10 (2) by inserting after subparagraph (B) the fol-
11 lowing new subparagraph:

12 “(C) Notwithstanding subparagraph (A), if the viola-
13 tor is (i) a broadcast station licensee or permittee, or (ii)
14 an applicant for any broadcast license, permit, certificate,
15 or other instrument or authorization issued by the Com-
16 mission, and the violator is determined by the Commission
17 under paragraph (1) to have broadcast obscene, indecent,



1 or profane material, the amount of any forfeiture penalty
2 determined under this section shall not exceed \$500,000
3 for each violation.”; and

4 (3) in subparagraph (D), as redesignated by
5 paragraph (1) of this subsection—

6 (A) by striking “subparagraph (A) or (B)”
7 and inserting “subparagraph (A), (B), or (C)”;
8 and

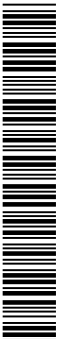
9 (B) by adding at the end the following:
10 “Notwithstanding the preceding sentence, if the
11 violator is determined by the Commission under
12 paragraph (1) to have uttered obscene, inde-
13 cent, or profane material (and the case is not
14 covered by subparagraph (A), (B), or (C)), the
15 amount of any forfeiture penalty determined
16 under this section shall not exceed \$500,000 for
17 each violation.”.

18 **SEC. 3. ADDITIONAL FACTORS IN INDECENCY PENALTIES;**

19 **EXCEPTION.**

20 Section 503(b)(2) of the Communications Act of
21 1934 (47 U.S.C. 503(b)(2)) is further amended by adding
22 at the end (after subparagraph (E) as redesignated by sec-
23 tion 2(1) of this Act) the following new subparagraphs:

24 “(F) In the case of a violation in which the violator
25 is determined by the Commission under paragraph (1) to



1 have uttered obscene, indecent, or profane material, the
2 Commission shall take into account, in addition to the
3 matters described in subparagraph (E), the following fac-
4 tors:

5 “(i) With respect to the degree of culpability of
6 the violator, the following:

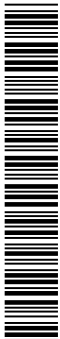
7 “(I) whether the material uttered by the
8 violator was live or recorded, scripted or
9 unscripted;

10 “(II) whether the violator had a reasonable
11 opportunity to review recorded or scripted pro-
12 gramming or had a reasonable basis to believe
13 live or unscripted programming would contain
14 obscene, indecent, or profane material;

15 “(III) if the violator originated live or
16 unscripted programming, whether a time delay
17 blocking mechanism was implemented for the
18 programming;

19 “(IV) the size of the viewing or listening
20 audience of the programming; and

21 “(V) whether the programming was part of
22 a children’s television program as described in
23 the Commission’s children’s television program-
24 ming policy (47 CFR 73.4050(c)).



1 “(ii) With respect to the violator’s ability to
2 pay, the following:

3 “(I) whether the violator is a company or
4 individual; and

5 “(II) if the violator is a company, the size
6 of the company and the size of the market
7 served.

8 “(G) A broadcast station licensee or permittee that
9 receives programming from a network organization, but
10 that is not owned or controlled, or under common owner-
11 ship or control with, such network organization, shall not
12 be subject to a forfeiture penalty under this subsection for
13 broadcasting obscene, indecent, or profane material, if—

14 “(i) such material was within live or recorded
15 programming provided by the network organization
16 to the licensee or permittee; and

17 “(ii)(I) the programming was recorded or
18 scripted, and the licensee or permittee was not given
19 a reasonable opportunity to review the programming
20 in advance; or

21 “(II) the programming was live or unscripted,
22 and the licensee or permittee had no reasonable
23 basis to believe the programming would contain ob-
24 scene, indecent, or profane material.



1 The Commission shall by rule define the term ‘network
2 organization’ for purposes of this subparagraph. ”.

3 **SEC. 4. INDECENCY PENALTIES FOR NONLICENSEES.**

4 Section 503(b)(5) of the Communications Act of
5 1934 (47 U.S.C. 503(b)(5) is amended—

6 (1) by redesignating subparagraphs (A), (B),
7 and (C) as clauses (i), (ii), and (iii), respectively;

8 (2) by inserting “(A)” after “(5)”;

9 (3) by redesignating the second sentence as
10 subparagraph (B);

11 (4) in such subparagraph (B) as redesignated—

12 (A) by striking “The provisions of this
13 paragraph shall not apply, however,” and in-
14 serting “The provisions of subparagraph (A)
15 shall not apply (i)”;

16 (B) by striking “operator, if the person”
17 and inserting “operator, (ii) if the person”;

18 (C) by striking “or in the case of” and in-
19 serting “(iii) in the case of”; and

20 (D) by inserting after “that tower” the fol-
21 lowing: “, or (iv) in the case of a determination
22 that a person uttered obscene, indecent, or pro-
23 fane material that was broadcast by a broadcast
24 station licensee or permittee, if the person is



1 determined to have willfully or intentionally
2 made the utterance”; and
3 (5) by redesignating the last sentence as sub-
4 paragraph (C).

5 **SEC. 5. DEADLINES FOR ACTION ON COMPLAINTS.**

6 Section 503(b) of the Communications Act of 1934
7 (47 U.S.C. 503(b)) is amended by adding at the end there-
8 of the following new paragraph:

9 “(7) In the case of an allegation concerning the utter-
10 ance of obscene, indecent, or profane material that is
11 broadcast by a station licensee or permittee—

12 “(A) within 180 days after the date of the re-
13 ceipt of such allegation, the Commission shall—

14 “(i) issue the required notice under para-
15 graph (3) to such licensee or permittee or the
16 person making such utterance;

17 “(ii) issue a notice of apparent liability to
18 such licensee or permittee or person in accord-
19 ance with paragraph (4); or

20 “(iii) notify such licensee, permittee, or
21 person in writing, and any person submitting
22 such allegation in writing or by general publica-
23 tion, that the Commission has determined not
24 to issue either such notice; and



1 “(B) if the Commission issues such notice and
2 such licensee, permittee, or person has not paid a
3 penalty or entered into a settlement with the Com-
4 mission, within 270 days after the date of the re-
5 ceipt of such allegation, the Commission shall—

6 “(i) issue an order imposing a forfeiture
7 penalty; or

8 “(ii) notify such licensee, permittee, or per-
9 son in writing, and any person submitting such
10 allegation in writing or by general publication,
11 that the Commission has determined not to
12 issue either such order.”.

13 **SEC. 6. ADDITIONAL REMEDIES FOR INDECENT BROAD-**
14 **CAST.**

15 Section 503 of the Communications Act of 1934 (47
16 U.S.C. 503) is further amended by adding at the end the
17 following new subsection:

18 “(c) **ADDITIONAL REMEDIES FOR INDECENT BROAD-**
19 **CASTING.**—In any proceeding under this section in which
20 the Commission determines that any broadcast station li-
21 censee or permittee has broadcast obscene, indecent, or
22 profane material, the Commission may, in addition to im-
23 posing a penalty under this section, require the licensee
24 or permittee to broadcast public service announcements
25 that serve the educational and informational needs of chil-



1 dren. Such announcements may be required to reach an
2 audience that is up to 5 times the size of the audience
3 that is estimated to have been reached by the obscene, in-
4 decent, or profane material, as determined in accordance
5 with regulations prescribed by the Commission.”.

6 **SEC. 7. LICENSE DISQUALIFICATION FOR VIOLATIONS OF**
7 **INDECENCY PROHIBITIONS.**

8 Section 503 of the Communications Act of 1934 (47
9 U.S.C. 503) is further amended by adding at the end
10 (after subsection (c) as added by section 6) the following
11 new subsection:

12 “(d) CONSIDERATION OF LICENSE DISQUALIFICA-
13 TION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.—
14 If the Commission issues a notice under paragraph (3)
15 or (4) of subsection (b) to a broadcast station licensee or
16 permittee looking toward the imposition of a forfeiture
17 penalty under this Act based on an allegation that the li-
18 censee or permittee broadcast obscene, indecent, or pro-
19 fane material, and either—

20 “(1) such forfeiture has been paid, or

21 “(2) a forfeiture penalty has been determined
22 by the Commission or an administrative law judge
23 pursuant to paragraph (3) or (4) of subsection (b),
24 and such penalty is not under review, and has not
25 been reversed, by a court of competent jurisdiction,



1 then, notwithstanding section 504(c), the Commission
2 shall, in any subsequent proceeding under section 308(b)
3 or 310(d), take into consideration whether the broadcast
4 of such material demonstrates a lack of character or other
5 qualifications required to operate a station.”.

6 **SEC. 8. LICENSE RENEWAL CONSIDERATION OF VIOLA-**
7 **TIONS OF INDECENCY PROHIBITIONS.**

8 Section 309(k) of the Communications Act of 1934
9 (47 U.S.C. 309(k)) is amended by adding at the end the
10 following new paragraph:

11 “(5) LICENSE RENEWAL CONSIDERATION OF
12 VIOLATIONS OF INDECENCY PROHIBITIONS.—If the
13 Commission has issued a notice under paragraph (3)
14 or (4) of section 503(b) looking toward the imposi-
15 tion of a forfeiture penalty under this Act based on
16 an allegation that a broadcast station licensee or
17 permittee broadcast obscene, indecent, or profane
18 material, and—

19 “(A) the forfeiture penalty has been paid,
20 or

21 “(B) a forfeiture penalty has been deter-
22 mined by the Commission or an administrative
23 law judge pursuant to paragraph (3) or (4) of
24 section 503(b), and such penalty is not under



1 review, and has not been reversed, by a court
2 of competent jurisdiction,
3 then, notwithstanding section 504(c), such violation
4 shall be treated as a serious violation for purposes
5 of paragraph (1)(B) of this subsection.”.

6 **SEC. 9. LICENSE REVOCATION FOR VIOLATIONS OF INDE-**
7 **CENCY PROHIBITIONS.**

8 Section 312 of the Communications Act of 1934 (47
9 U.S.C. 312) is amended by adding at the end the following
10 new subsection:

11 “(h) LICENSE REVOCATION FOR VIOLATIONS OF IN-
12 DECENCY PROHIBITIONS.—

13 “(1) CONSEQUENCES OF MULTIPLE VIOLA-
14 TIONS.—If, in each of 3 or more proceedings during
15 the term of any broadcast license, the Commission
16 issues a notice under paragraph (3) or (4) of section
17 503(b) to a broadcast station licensee or permittee
18 looking toward the imposition of a forfeiture penalty
19 under this Act based on an allegation that the li-
20 censee or permittee broadcast obscene, indecent, or
21 profane material, and in each such proceeding
22 either—

23 “(A) such forfeiture has been paid, or

24 “(B) a forfeiture penalty has been deter-
25 mined by the Commission or an administrative



1 law judge pursuant to paragraph (3) or (4) of
2 section 503(b), and such penalty is not under
3 review, and has not been reversed, by a court
4 of competent jurisdiction,

5 then, notwithstanding section 504(c), the Commis-
6 sion shall commence a proceeding under subsection
7 (a) of this section to consider whether the Commis-
8 sion should revoke the station license or construction
9 permit of that licensee or permittee.

10 “(2) PRESERVATION OF AUTHORITY.—Nothing
11 in this subsection shall be construed to limit the au-
12 thority of the Commission to commence a proceeding
13 under subsection (a).”.

14 **SEC. 10. REQUIRED CONTENTS OF ANNUAL REPORTS OF**
15 **THE COMMISSION.**

16 Each annual report submitted by the Federal Com-
17 munications Commission after the date of enactment of
18 this Act shall, in accordance with section 4(k)(2) of the
19 Communications Act of 1934 (47 U.S.C. 154(k)(2)), in-
20 clude the following:

21 (1) The number of complaints received by the
22 Commission during the year covered by the report
23 alleging that a broadcast contained obscene, inde-
24 cent, or profane material, and the number of pro-
25 grams to which such complaints relate.



1 (2) The number of those complaints that have
2 been dismissed or denied by the Commission.

3 (3) The number of complaints that have re-
4 mained pending at the end of the year covered by
5 the annual report.

6 (4) The number of notices issued by the Com-
7 mission under paragraph (3) or (4) of section 503(b)
8 of the Communications Act of 1934 (47 U.S.C.
9 503(b)) during the year covered by the report to en-
10 force the statutes, rules, and policies prohibiting the
11 broadcasting of obscene, indecent, or profane mate-
12 rial.

13 (5) For each such notice, a statement of—

14 (A) the amount of the proposed forfeiture;

15 (B) the program, station, and corporate
16 parent to which the notice was issued;

17 (C) the length of time between the date on
18 which the complaint was filed and the date on
19 which the notice was issued; and

20 (D) the status of the proceeding.

21 (6) The number of forfeiture orders issued pur-
22 suant to section 503(b) of such Act during the year
23 covered by the report to enforce the statutes, rules,
24 and policies prohibiting the broadcasting of obscene,
25 indecent, or profane material.



1 (7) For each such forfeiture order, a statement
2 of—

3 (A) the amount assessed by the final for-
4 feiture order;

5 (B) the program, station, and corporate
6 parent to which it was issued;

7 (C) whether the licensee has paid the for-
8 feiture order;

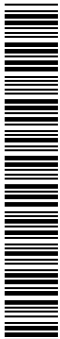
9 (D) the amount paid by the licensee; and

10 (E) in instances where the licensee refused
11 to pay, whether the Department of Justice
12 brought an action in Federal court to collect
13 the penalty.

14 **SEC. 11. SENSE OF THE CONGRESS.**

15 (a) REINSTATEMENT OF POLICY.—It is the sense of
16 the Congress that the broadcast television station licensees
17 should reinstitute a family viewing policy for broadcasters.

18 (b) DEFINITION.—For purposes of this section, a
19 family viewing policy is a policy similar to the policy that
20 existed in the United States from 1975 to 1983, as part
21 of the National Association of Broadcaster's code of con-
22 duct for television, and that was rescinded in 1983, when
23 such code was challenged on antitrust grounds unrelated
24 to the family viewing policy, and that included the concept
25 of a family viewing hour.



1 **SEC. 12. IMPLEMENTATION.**

2 (a) REGULATIONS.—The Commission shall prescribe
3 regulations to implement the amendments made by this
4 Act within 180 days after the date of enactment of this
5 Act.

6 (b) PROSPECTIVE APPLICATION.—This Act and the
7 amendments made by this Act shall not apply with respect
8 to material broadcast before the date of enactment of this
9 Act.

10 (c) SEPARABILITY.—Section 708 of the Communica-
11 tions Act of 1934 (47 U.S.C. 608) shall apply to this Act
12 and the amendments made by this Act.

Amend the title so as to read: “A Bill to increase
the penalties for violations by television and radio broad-
casters of the prohibitions against transmission of ob-
scene, indecent, and profane material, and for other pur-
poses”.

